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WM. R. STANSBU
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IN THE

SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1923

THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY, a corporation,
Appellant,

v.

E. V. KUYKENDALL, as Director of Public Works of Washington, HANCE H. CLELAND, as Supervisor of Public Utilities of Washington, and FRANK R. SPINNING, as Supervisor of Transportation of Washington, the persons constituting the Department of Public Works of the State of Washington, and JOHN H. DUNBAR, Attorney General of the State of Washington.
Appellees.

No. 540

MOTION TO DISMISS

JOHN H. DUNBAR,
Attorney General of the State of Washington,

RAYMOND W. CLIFFORD,
Assistant Attorney General of the State of Washington,

H. C. BRODIE,
Counsel for Appellees.

FRANK M. LAMBORN, PUBLIC PRINTER, OLYMPIA

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Appellant,

v.

E. V. KUYKENDALL, as Director of Public Works of Washington, HANCE H. CLELAND, as Supervisor of Public Utilities of Washington, and FRANK R. SPINNING, as Supervisor of Transportation of Washington, the persons constituting the Department of Public Works of the State of Washington, and JOHN H. DUNBAR, Attorney General of the State of Washington.
Appellees.

No. 540

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JOHN H. DUNBAR,
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H. C. BRODIE,
Counsel for Appellees.

INDEX.

	Page
Acknowledgment of Service	3
Notice	5
Motion to Dismiss	7
Statement	8
Argument	11

Cases cited:

American Book Co. v. Kansas, 193 U. S. 49	11
Atherton Mills v. Johnston, 259 U. S. 16	11
Brownlow v. Schwartz, 67 L. Ed. 288	11
Heitmuller v. Stokes, 256 U. S. 359	11
Mills v. Green, 159 U. S. 651	11
Shaffer v. Carter, 252 U. S. 37, 64 L. Ed. 445	11

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THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY, a corporation,
Appellant,
v.
E. V. KUYKENDALL, as Director of Public Works of Washington, *et al.*,
Appellees.

No. 540

ACKNOWLEDGMENT OF SERVICE

Service of a copy of the within Notice, Motion to Dismiss, Statement and Argument is hereby admitted by the undersigned at Seattle, Washington, this 11th day of February, 1924.

C. M. BRACELEN,
OTTO B. RUPP,
H. D. PILLSBURY,
FRANK T. POST,
W. V. TANNER,
Counsel for Appellant.

In the Supreme Court of the United States

OCTOBER TERM, 1923

THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY, a corporation, *Appellant*, v. E. V. KUYKENDALL, as Director of Public Works of Washington, *et al.*, *Appellees.*	No. 540

NOTICE

TO THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY, a corporation, Appellant, and to C. M. BRACELEN, OTTO B. RUPP, H. D. PILLSBURY, FRANK T. POST and W. V. TANNER, counsel for appellant:

Please take notice that on Monday, March 24, 1924, at 12 o'clock, noon, or as soon thereafter as counsel may be heard, the appellees herein will submit to the consideration of the court their motion to dismiss, copy of which is attached.

JOHN H. DUNBAR,
Attorney General of the State of Washington,

RAYMOND W. CLIFFORD,
Assistant Attorney General of the State of Washington,

H. C. BRODIE,
Counsel for Appellees.

In the Supreme Court of the United States

OCTOBER TERM, 1923

THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY, a corporation,
Appellant,
v.
E. V. KUYKENDALL, as Director of Public Works of Washington, *et al.*,
Appellees.

No. 540

MOTION TO DISMISS

Now come the appellees herein and move the court to dismiss the appeal from an order denying an interlocutory injunction herein upon the following grounds:

I.

That this court will not review the order denying an interlocutory injunction for the reason that the question of relief *pendente lite* has become moot by dismissal of the complaint therein.

JOHN H. DUNBAR,
Attorney General of the State of Washington,

RAYMOND W. CLIFFORD,
Assistant Attorney General of the State of Washington,

H. C. BRODIE,
Counsel for Appellees.

STATEMENT.

For the purpose of the motion hereinbefore set out, the facts involved may be stated as follows:

The Pacific Telephone and Telegraph Company, on the 24th day of April, 1923, filed in the district court of the United States, for the western district of Washington, southern division, its bill of complaint against the appellees herein. In said complaint, in addition to other matters, the appellants prayed for a temporary injunction to restrain the appellees herein from enforcing a certain rate order of the department of public works of the state of Washington. On April 30, 1923, the application of the appellant for an interlocutory injunction came on to be heard before the statutory court of three judges provided for in section 266 of the Judicial Code, and said application was denied, and from said order this appeal was prosecuted to this court.

Thereafter such proceedings were had in said case in the district court as resulted in the entry of an order dismissing the bill of complaint therein by the said court on the 5th day of January, 1924. From said order of dismissal, an appeal has been taken to this court and is now pending herein as cause No. ..... The transcript of record in said appeal from said final order has not yet been printed, but for the information of the court in passing on this motion, said order of dismissal is set forth in full as follows:

In the District Court of the United States, for the Western District of Washington

SOUTHERN DIVISION

IN EQUITY. No. 166-E

THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY, a corporation,
Plaintiff,
v.
E. V. KUYKENDALL, as Director of Public Works of Washington, HANCE H. CLELAND, as Supervisor of Public Utilities of Washington, and FRANK R. SPINNING, as Supervisor of Transportation of Washington, the persons constituting the Department of Public Works of the State of Washington, and JOHN H. DUNBAR, Attorney General of the State of Washington.
Defendants.

DECREE

This cause having come on regularly for hearing in this court on the 31st day of December, 1923, upon the defendants' motion to dismiss the bill of complaint filed herein, plaintiff being represented by Messrs. Otto B. Rupp and W. V. Tanner, its solicitors, and the defendants being represented by John H. Dunbar, Attorney General of the State of Washington, and Raymond W. Clifford, his assistant, and Messrs. H. C. Brodie, Thomas J. L. Kennedy and

E. K. Murray, their solicitors, and after hearing the arguments of counsel for the respective parties, the court having announced its oral opinion and decision that the motion to dismiss should be sustained upon the grounds that the bill of complaint herein does not state any matters of equity entitling the complainant to the relief prayed for; that said bill of complaint does not state facts sufficient to entitle complainant to any relief against the defendants; and that said bill has been prematurely brought, by reason of the failure to exhaust the right of plaintiff to relief in the superior and supreme courts of the state of Washington;

Now, on this 5th day of January, 1924, the parties herein now appearing by their respective counsel, on motion of the defendants, pursuant to such decision of the court, it is by the court hereby ORDERED, ADJUDGED and DECREED that said motion to dismiss be and it is hereby granted, and that said bill of complaint and this cause of action be and the same hereby are dismissed, and that the defendants have and recover their costs and disbursements herein.

To the foregoing, and each and every part thereof, the plaintiff excepts, and its exception is allowed.

Done in open court this 5th day of January, 1924.

EDWARD E. CUSHMAN,
Judge.

ARGUMENT.

I.

The application for an interlocutory injunction was an application for relief *pendente lite,* and upon the dismissal of the litigation by the foregoing final order, no relief *pendente lite* could be afforded and the question of such relief becomes a moot question, and under innumerable decisions of this court, a moot question will not be passed upon.

Brownlow v. Schwartz, 67 L. ed. 288,
Atherton Mills v. Johnston, 259 U. S. 16,
Heitmuller v. Stokes, 256 U. S. 359,
American Book Company v. Kansas, 193 U. S. 49,
Mills v. Green, 159 U. S. 651,

and numerous other cases cited in the above cases.

II.

When an appeal has been taken from an order denying an interlocutory injunction, and thereafter an order is entered dismissing the complaint and an appeal is prosecuted from such final order of dismissal, the interlocutory appeal should be dismissed and the case considered on the appeal from the final order of dismissal.

Shaffer v. Carter, 252 U. S. 37, 64 L. ed. 445.

It is therefore respectfully submitted that the motion to dismiss the appeal from the order denying an interlocutory injunction should be granted.

JOHN H. DUNBAR,
Attorney General of the State of Washington,

RAYMOND W. CLIFFORD,
Assistant Attorney General of the State of Washington,

H. C. BRODIE,
Counsel for Appellees.